

(2)
No. 87-1110.

Supreme Court, U.S.
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**In the
Supreme Court of the United States.**

OCTOBER TERM, 1987.

MARSHALL YOUNG, ADMINISTRATOR OF THE ESTATE OF
LLOYD YOUNG AND CAROLE YOUNG,
PETITIONERS,

v.

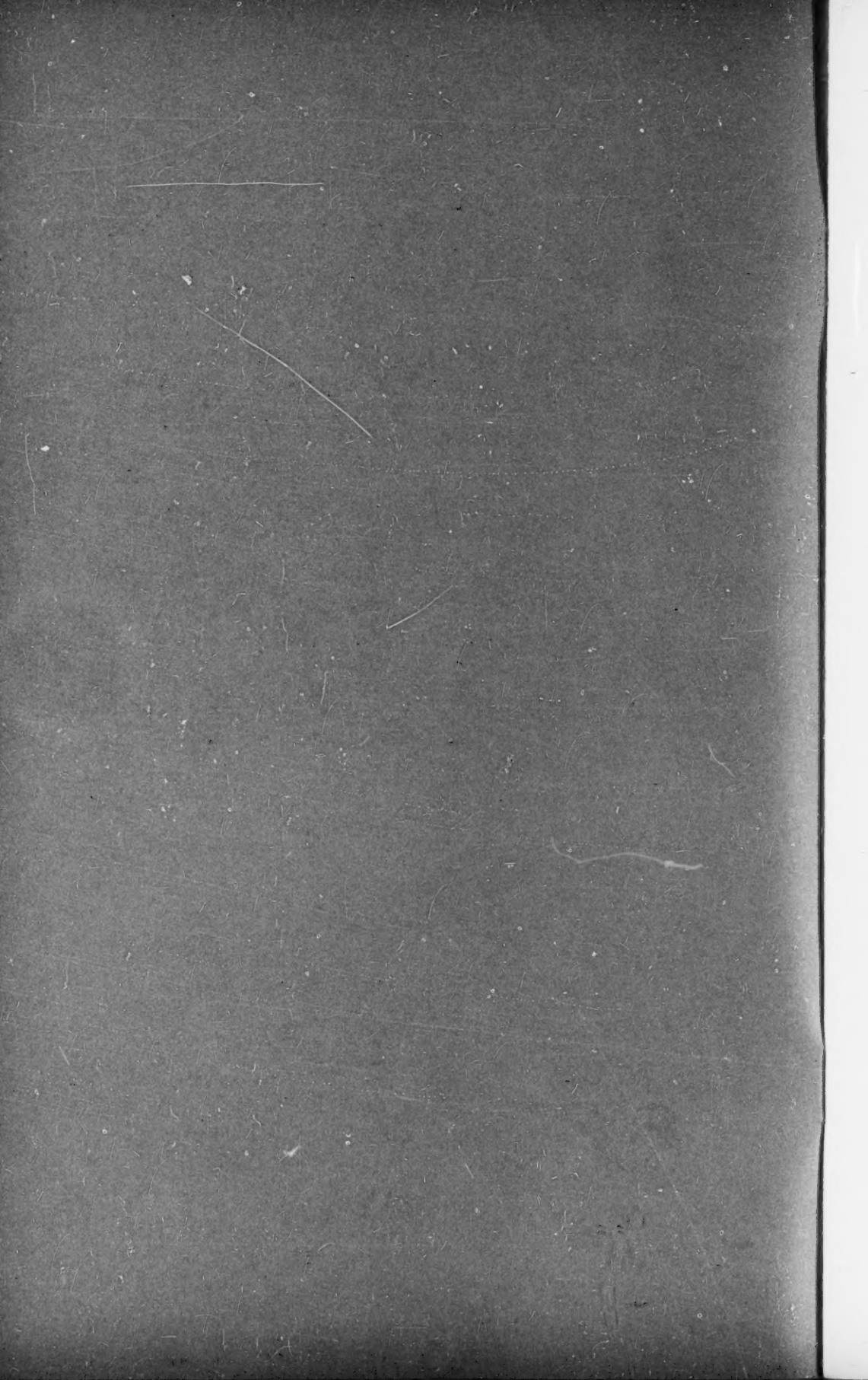
ATLANTIC RICHFIELD COMPANY,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
JUDICIAL COURT OF MASSACHUSETTS.

**Atlantic Richfield Company's Brief in Opposition to
Petition for Writ of Certiorari.**

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January 29, 1988



Question Presented.

Did the Massachusetts Supreme Judicial Court violate Petitioners' state right to a civil jury trial by holding that an oil company has no duty to warn patrons to watch for moving cars in a gas station?

List of Parties.

Plaintiffs/Petitioners:	Marshall Young, Admr. of the Estate of Lloyd Young; and Carole Young
Defendant/Respondent:	Atlantic Richfield Co. ("Arco")
Other Defendants:	John Santilli and Joseph Kovack

Arco was the only defendant to pursue appeal of the trial court's judgments and is the only respondent to this Petition for Certiorari.

Rule 28.1 List.

Arco has no parent companies. Its subsidiaries, not including wholly-owned subsidiaries, are set forth in the appendix to this brief.

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CONSTITUTIONAL PROVISIONS.

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Opinions Below.

The opinions below are as stated by Petitioners.

Jurisdiction.

The decision of the Massachusetts Supreme Judicial Court involves only the determination and application of Massachu-

setts tort law. No right under federal law or the United States Constitution was infringed. Therefore, this Court lacks jurisdiction to review the Supreme Judicial Court's decision.

Constitutional Provisions Involved.

A. United States Constitution.

The Fourteenth Amendment, Section 1:

No state shall . . . deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

B. Massachusetts Constitution.

Constitution of Massachusetts, Declaration of Rights, Article XV:

In all controversies concerning property, and in all suits between two or more persons . . . the parties have a right to a trial by jury . . .

Statement of the Case.

A. Procedural History.

On September 2, 1987, the Massachusetts Supreme Judicial Court reversed judgments of a trial court in favor of petitioners Marshall Young and Carole Young ("Petitioners") and entered

judgment for defendant/respondent Atlantic Richfield Company ("Arco"). The Court held that, as a matter of Massachusetts tort law, the evidence did not sustain the judgments against Arco. *Young v. Atlantic Richfield Co.*, 400 Mass. 837, 512 N.E.2d 272 (1987).

Petitioners seek a Writ of Certiorari to the Massachusetts Supreme Judicial Court, and ask this Court to review the Supreme Judicial Court's decision. Because the decision involves simply the determination and application of Massachusetts tort law, and gives rise to no claim under the United States Constitution or federal law, the petition should be denied.

B. Statement of Facts.

On June 22, 1977, Joseph Kovack ("Kovack"), a seventy-seven-year-old man, struck and killed decedent Lloyd Young when he backed his car towards two gasoline pumps in an Arco gas station at between 12 and 15 miles per hour (R. 372).¹ Young had just finished pumping gasoline into his mother's car from a "Mini-Serve" gas pump and was replacing the gas cap when he was struck by Kovack.

Eyewitnesses testified that Kovack did not look where he was going (R. 202) and that he never applied his brakes or slowed down (R. 230-235). Kovack claimed he was attempting to execute a two point turn when he lost control of his car (R. 1539-1561). Subsequent testing of the car revealed no mechanical defects (R. 1334-1336).

Petitioners brought suit against three defendants: Arco, the station owner; John Santilli, the station lessee; and Kovack. The case was tried to a jury for ten days in January and February, 1985. Petitioners proceeded on two theories against

¹ References to the appendices are: (A.) to pages in the record appendix; and (R.) to the trial court record.

Arco: (1) Arco should have warned customers to watch for cars moving about in the gas station; and (2) that Arco was negligent in posting a sign reading "Mini-Serve" at one pump without stating that the attendant was supposed to pump the gasoline. See *Young v. Atlantic Richfield Co.*, 400 Mass. at 841-842, 512 N.E.2d at 275.

The jury returned verdicts on negligence counts against all defendants (R. 41-44). Arco appealed to the Appeals Court of Massachusetts and, on June 12, 1986, the Massachusetts Supreme Judicial Court ordered the appeal transferred from the Appeals Court on its own motion (A. 2).²

On September 2, 1987, after the case was fully briefed and argued by both parties, the Supreme Judicial Court reversed the judgments and entered judgment for Arco. The Court held that Arco had no duty to warn customers about dangers created by moving automobiles because, under Massachusetts law, there is no duty to warn of risks that are open and obvious to persons of average intelligence. *Id.* at 841, 512 N.E.2d at 275-276. The Court further held that the "Mini-Serve" sign was not a proximate cause of the accident, as a matter of Massachusetts tort law, because the sign "did not create a risk of the species which was causally related to the result which occurred." *Id.* at 842 (Citations omitted.)

The Court's decision was firmly grounded in Massachusetts precedent and gives rise to no federal or constitutional issues meriting this Court's review.

² Santilli also appealed, but withdrew his appeal. Kovack did not appeal the judgment against him.

Reasons for Denying the Writ.

THE SUPREME JUDICIAL COURT'S DECISION IS FIRMLY GROUNDED IN ESTABLISHED MASSACHUSETTS TORT LAW AND INVOLVES NO FEDERAL LAW OR CONSTITUTIONAL RIGHT.

Under Massachusetts tort law, it is for the court to determine whether the defendant owes a duty to the plaintiff. *Dhimos v. Cormier*, 400 Mass. 504, 507, 509 N.E.2d 1199, 1200 (1987); *Bacon v. Federal Kemper Life Assurance Co.*, 400 Mass. 850, 856, 512 N.E.2d 941, 943 (1987) (O'Connor, J., concurring). It is a well established principle of Massachusetts tort law that a landowner owes no duty to warn those on the premises of open and obvious dangers or of conditions that naturally result from the manner in which its business is openly and visibly carried on. *Clough v. New England Tel. & Tel. Co.*, 342 Mass. 31, 35-36, 172 N.E.2d 113, 116 (1961); *LeBlanc v. Atlantic Building & Supply Co., Inc.*, 323 Mass. 702, 705, 84 N.E.2d 10, 11 (1949).

"There is no duty upon a landowner to warn a business visitor of dangers, knowledge of which the landowner may reasonably assume the visitor has." *O'Hanley v. Norwood*, 315 Mass. 440, 442, 53 N.E.2d 3, 4 (1944) (affirming the reversal of a judgment for a plaintiff who tripped over a tire jack in a gas station because the danger was open and obvious). Thus, a gas station owner has no duty to warn customers about dangerous conditions which are open and obvious. *St. Rock v. Gagnon*, 342 Mass. 722, 723, 175 N.E.2d 361, 362 (1961) (reversing a judgment for a plaintiff who tripped over a jack handle in a gas station, because the hazard was obvious and naturally resulted "from the manner in which the work was openly carried on."). See also *Brillante v. United States*, 449 F.Supp. 597, 599 (D.Mass. 1978) (applying Massachusetts law and holding that a landowner has no duty to warn business invitees of obvious dangers in a parking lot).

There can be nothing more obvious than the fact that cars will be moving about in gas stations. The very purpose of gas stations is to sell fuel for motor vehicles. As the Supreme Judicial Court stated, "In our society, the average fifteen-year-old boy who has completed the tenth grade has been taught from a very young age about the dangers of automobiles. Such dangers are obvious to a fifteen-year-old of average intelligence." *Young v. Atlantic Richfield Co.*, 400 Mass. at 842, 512 N.E.2d at 276.

The danger presented by moving cars is as obvious in a gas station as it is on the street or in a driveway. The Supreme Judicial Court did nothing more than recognize the common sense principle that, today, people of average intelligence are well aware of the dangers posed by moving vehicles. Nothing is gained by imposing a duty on station owners to warn customers to watch for moving cars.

Similarly, the Court's holding that the "Mini-Serve" sign was not a proximate cause of Lloyd Young's injuries is founded on long-standing principles of Massachusetts common law. Whether an act is a proximate or legal cause of an accident is a question of law to be determined by the court. *Wallace v. Ludwig*, 292 Mass. 251, 255, 198 N.E. 159, 161 (1935); *Horan v. Watertown*, 217 Mass. 185, 186, 104 N.E. 464, 465 (1914). If an accident is not a reasonably foreseeable consequence of the defendant's act, the defendant's actions are not the proximate or legal cause of the injuries. *Bellows v. Worcester Storage Co.*, 297 Mass. 188, 197, 7 N.E.2d 588, 592 (1937).

Applying these standards, the Supreme Judicial Court correctly ruled that the "Mini-Serve" sign was not the proximate cause of Lloyd Young's injuries. The accident was caused by a seventy-seven-year-old man who backed his car across the station at excessive speed, without braking or looking where he was going. The sign had nothing to do with the accident. Had the

pump been a self-service pump, as the Youngs thought, the result would have been no different. Kovack's driving, not the "Mini-Serve" sign, was the legal cause of the accident. See *Fielding v. S. Z. Poli Realty Co.*, 274 Mass. 20, 22, 174 N.E. 178, 179 (1931) (holding that a driver who lost control of his car in a parking lot was the sole cause of resulting injuries, even if the lot was negligently maintained). See also *Stone v. Williams*, 64 N.Y.2d 639, 640, 642, 474 N.E.2d 250, 252 (1984) (affirming the reversal of a judgment for the plaintiff who was struck by a moving car at a self-service gas station).

Petitioners attempt to create a federal constitutional issue by arguing that the Supreme Judicial Court denied petitioners' Fourteenth Amendment rights and infringed on their right to a jury trial under the Massachusetts Declaration of Rights, Article XV, by vacating the verdicts and reversing the trial court's judgments. This Court has never held that a plaintiff has a constitutional right not to have a verdict in his favor reviewed by a higher court, and the Massachusetts Supreme Judicial Court has expressly rejected that argument.

In *New England Novelty Co. v. Sandberg*, 315 Mass. 739, 750, 54 N.E.2d 915, 919 (1944), the Supreme Judicial Court, interpreting Article XV of the Massachusetts Declaration of Rights, held that the right to a jury trial does not preclude courts from vacating verdicts unsupported by law:

A trial by jury, however, does not mean that the verdict is final and conclusive upon the parties in the sense that it cannot be set aside for errors of law.

The *Sandberg* Court held that any party has a right to have a verdict set aside if it cannot stand under state law:

[O]ne cannot rightly be said to have had a trial by jury if he is denied the right to have the verdict set aside where the evidence was insufficient to support it. *Id.* (citations omitted).

The Court declared that the right to a jury trial under Article XV includes the right to have a verdict set aside if not supported by law or the evidence:

Doubtless, the power of a judge . . . to set aside a verdict for any reason recognized by law is a part of the constitutional right to a trial by jury. *Id.* (citations omitted).

Petitioners' right to trial by jury under Article XV was in no way infringed by the Supreme Judicial Court's decision. The Court exercised its duty to review the evidence and reverse judgments which could not stand under Massachusetts law. Because judgments based on these verdicts had no basis in Massachusetts law, Arco had a right to have the judgments set aside.

Petitioners cite no case in support of their argument that the Supreme Judicial Court was compelled to affirm the trial court judgments simply because one justice dissented from the majority opinion. If petitioners' argument were accepted, a new constitutional rule would be imposed on all state supreme courts that jury verdicts could be reversed only by a unanimous decision of the reviewing court. Neither the Due Process Clause of the Fourteenth Amendment, nor any decision of this or any other court creates such a requirement.

In reversing the judgments, the Supreme Judicial Court simply applied established Massachusetts tort law to an accident

case in a gasoline station. The Massachusetts Supreme Judicial Court has the final authority to declare and apply common law of Massachusetts to personal injury actions which occur within the Commonwealth. As this Court declared in *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 680 (1930):

[T]he courts of a State have the supreme power to interpret and declare the written and unwritten laws of the State; [and] this Court's power to review decisions of state courts is limited to their decisions on federal questions; and . . . the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court.

See also *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 450 (1924) (when the parties have been fully heard in state court, "the mere fact that the state court reversed a former decision to the detriment of one party does not take away his property without due process of law").

Petitioners had ample chance to present their arguments to the Massachusetts Supreme Judicial Court. The case was exhaustively briefed and argued before the Court's decision was published. Petitioners' due process rights were fully protected.

Despite petitioners' spurious attempt to create a constitutional issue, the Supreme Judicial Court's opinion in *Young v. Arco* involves only the application of Massachusetts tort law. No federal or constitutional issues are raised.

Conclusion.

For the foregoing reasons, Atlantic Richfield Company respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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January 29, 1988

Appendix.

**ATLANTIC RICHFIELD COMPANY
SUPREME COURT RULE 28.1 LIST OF
NON-WHOLLY OWNED SUBSIDIARIES
AND AFFILIATES**

Acrylates, Inc.

Agro Internacional, S, de R.L. de C.V.

Alyeska Pipeline Service Company

AMCOR-Chem. Inc.

Anamax Mining Company

ARCHEM Company

Arco Centennial Corp.

Arco Chemical Asia Pacific, Ltd.

ARCO Chemical Bahamas Ltd.

ARCO Chemical Canada Inc.

ARCO Chemical China, Limited

ARCO Chemical Company

ARCO Chemical (Deutschland) GmbH

ARCO Chemical Espana Co.

Arco Chemical Europe, Inc.

Arco Chemical (Europe) Inc.

Arco Chemical Export Sales Company

Arco Chemical Foreign Sales Corporation

ARCO Chemical Iberica de Portugal, LBA

ARCO Chemical Iberica, S.A.

ARCO Chemical Indonesia, Inc.

Arco Chemical International Company

ARCO Chemical Japan, Inc.

ARCO Chemical Korea, Inc.

ARCO Chemical Middle East, Inc.

ARCO Chemical New Zealand, Inc.

ARCO Chemical Overseas Services, Inc.

ARCO Chemical Pan America, Inc.
ARCO Chemical Products Europe, Inc.
ARCO Chemical (Singapore) PTE, Ltd.
ARCO Chemical (Thailand), Limited
ARCO Chemical Trading, Inc.
ARCO Chemie Nederland, Ltd.
ARCO Chimie France Corporation.
ARCO Chimie France S.N.C.
ARCO Comfort Products Company
ARCO Durethene Pipe, Inc.
ARCO Durethene Plastics, Inc.
ARCO Energy Conservation, Inc.
ARCO Environmental, Inc.
ARCO France, Inc.
ARCO Idemitsu Corporation
ARCO/JSP Company
ARCO Medical Products Company
ARCO Plastics, Inc.
ARCO Solar (Europe) GmbH
ARCO Solar (Europe) S.p.A.
ARCO Solar Group, Inc.
ARCO Solar Nigeria, Ltd.
ARCO Synthesis, Inc.
ARCO Technology, Inc.
Arpet Petroleum Limited
Atlantic Richfield Hanford Company
Atlantic Richfield Oil Limited

Badger Pipeline Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
C L. Petroleum Inc.
Candel International, Limited
Colonial Pipeline Company
Compania Minera Dos Republicas S.A. de C.V.

Compania de Petroleo Ganso Azul, Ltda.
Cook Inlet Pipe Line Company
Curragh Coal Sales Co. Pty. Ltd.

Dixie Pipeline Company

East Texas Salt Water Disposal Co.
85819 Canada Limited
Eisenhower Mining Company
Enerlink
Enerlink (Scotland) Limited

Graph, Inc.
Greater Pacific Limited

HWG Inc.

Industrias Nacobre, S.A. de C.V.
Iricon Agency Ltd.

Kenai Pipe Line Company
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company

Las Quintas Serenas Water Company
Logan Aluminum, Inc.

N.T. Development, Inc.
Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S
Northrop Incorporated (nameholder)

Oxirane Chemical Company
Oxirane Technology (Japan) Company (a Partnership)

P. T. Elnusa Chemlink
Platte Pipe Line Company
Prince Consolidated Mining Company

Richfield U. K. Petroleum, Limited
Rodman, Inc.

SHOWA ARCO Solar Far East PTE. LTD.

SHOWA ARCO Solar K.K.

Sinclair (U.K.) Oil Company Limited

Sinclair Venezuelan Oil Company

Smoke House Copper Mining Company

SUMIARCO Company Limited

Tecumseh Pipe Line Company

Texas-New Mexico Pipe Line Company

Union de Credito Industrial Vallejo, S.A.

